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SENATE BILL 1310 By
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HOUSE BILL 1809
By Rinks

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4, Part 21 and Title 67, Chapter 4, Part 20, relative to franchise and excise taxes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-2003, is amended by adding the following language as new subsections (d) and (e):

(d) An affiliated group subject to the tax levied by this part shall register with the department of revenue as an affiliated group, providing such information as is reasonably required by the department. The registration information form shall be filed with the department by August 31, 2003, or within fifteen (15) days after the date the affiliated group becomes subject to the tax, whichever date occurs last. An affiliated group shall be required to so register even though some or all of the corporations included in its filing group may have registered or filed an excise tax return under prior law. In the event that corporate members of an affiliated group cease to be a part of the filing group or in the event that new corporate members join the filing group, the affiliated group shall so advise the department of revenue within thirty (30) days of the event by

filing an amended registration form providing such information as is reasonably required by the department.

(e) The commissioner shall assess a penalty of one hundred dollars (\$100) for each failure to timely register in accordance with the provisions of this section.

SECTION 2. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following sentence at the end of subitem (16):

In the case of persons or taxpayers required to file franchise and excise tax returns on a combined or consolidated basis, the combined or consolidated group shall be considered a single person or taxpayer;

SECTION 3. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as a new subitem:

() "Affiliated group" means any group of corporations engaged in a unitary business that have elected to file a consolidated federal income tax return under the provisions of Section 1501 through 1505 of the Internal Revenue Code; provided, that for purposes of Parts 20 and 21 of this chapter, neither a financial institution, a hospital or hospital company, nor an insurance company shall be considered an affiliated group or affiliated group member. For tax years ending on or after July 1, 2003, affiliated groups shall file consolidated franchise, excise tax returns to the extent of their United States operations. Such consolidated franchise, excise tax returns shall include all corporations that are filing on a consolidated basis for federal income tax purposes if one or more such corporations would be subject to Tennessee franchise, excise taxes if it were filing on a separate entity basis.

SECTION 4. Tennessee Code Annotated, Section 67-4-2006(a), is amended by adding the following new subdivision (4) immediately after subdivision (3) and renumbering the remaining subdivisions accordingly:

(4) For an affiliated group of corporations, “net earnings” for Tennessee excise tax purposes is defined as the federal consolidated taxable income or loss of the affiliated group before the net operating loss deduction and special deductions provided for in Sections 241 through 247 and 249 in the Internal Revenue Code, and as adjusted by subsections (b) and (c) of this section on a consolidated basis.

SECTION 5. Tennessee Code Annotated, Section 67-4-2006(c), is amended by deleting the first sentence of subdivision (2) and substituting instead the following two (2) sentences:

Except for taxpayers required to file excise tax returns on a combined or consolidated basis, each taxpayer is considered a separate and single business entity; therefore, in the case of mergers, consolidations and like transactions, no loss carryovers incurred by the predecessor taxpayer shall be allowed as a deduction from net earnings on the excise tax return filed by the successor taxpayer. Except as otherwise provided in Section 67-4-2018, in no case shall any taxpayer, whether filing its excise tax return on a combined, consolidated, or single entity basis, be permitted to take a loss carryover that it, or a business entity included in its filing group, generated during a tax year in which such entity was not subject to Tennessee franchise, excise taxes and did not file a franchise, excise tax return.

SECTION 6. Tennessee Code Annotated, Section 67-4-2006(c), is amended by deleting the language in subdivision (4) in its entirety and substituting instead the following language:

Taxpayers required to file excise tax returns on a combined or consolidated basis may take any qualified Tennessee loss carryover that was generated by any group member that is in existence as a member of the group at the end of the group’s tax year; provided that such loss carryover has not previously been taken by the member itself before it joined the group or by another group at the time the group member generating the loss was a member of that group; and provided, that the loss carryover shall be subject to the limitations set forth in this subsection. Except as otherwise provided in

Section 67-4-2018, in no case shall any taxpayer filing its excise tax return on a combined or consolidated basis, be permitted to take a loss carryover that a business entity included in its filing group, generated during a tax year in which such entity was not subject to Tennessee excise tax and did not file an excise tax return.

SECTION 7. Tennessee Code Annotated, Section 67-4-2007, is amended by deleting the language in subsection (e) in its entirety and substituting instead the following new language:

Except for taxpayers required to file excise tax returns on a combined or consolidated basis, each taxpayer is considered a separate and single business entity for Tennessee excise tax purposes and shall file its excise tax return on a separate entity basis reflecting only its own business activities.

SECTION 8. Tennessee Code Annotated, Section 67-4-2009(7), is amended by deleting the first sentence of subdivision (A) in its entirety and substituting instead the following:

Except for unitary groups of financial institutions and business entities that have been required to file excise tax returns on a combined or consolidated basis, each taxpayer is considered a separate entity; therefore, in the case of mergers, consolidations and like transactions, no tax credit incurred by the predecessor taxpayer shall be allowed as a credit on the tax return filed by the successor taxpayer. Except as otherwise provided in Section 67-4-2018, in no case shall any taxpayer, whether filing its excise tax return on a combined, consolidated or single entity basis, be permitted to take a credit carryover that it, or a business entity included in its filing group, generated during a tax year in which such entity was not subject to Tennessee franchise, excise taxes and did not file a franchise, excise tax return.

SECTION 9. Tennessee Code Annotated, Section 67-4-2009(7), is amended by deleting the language in subdivision (C) in its entirety and substituting instead the following language:

Taxpayers that have been required or permitted to file excise tax returns on a combined or consolidated basis may take any qualified credit that was generated by any group member that is in existence as a member of the group at the end of the group's tax year; provided that such credit has not previously been taken by the member itself before it joined the group or by another group at the time the group member generating the credit was a member of that group; and provided that, the credit carryover shall be subject to the limitations set forth in this subsection. Except as otherwise provided in Section 67-4-2018, in no case shall any taxpayer filing its excise tax return on a combined or consolidated basis, be permitted to take a credit carryover that a business entity included in its filing group, generated during a tax year in which such entity was not subject to Tennessee franchise, excise taxes and did not file a franchise, excise tax return.

SECTION 10. Tennessee Code Annotated, Section 67-4-2012, is amended by adding the following sentence at the end of subsection (a):

Persons required or permitted to file excise tax returns on a consolidated basis shall compute their excise tax apportionment formula on a consolidated basis.

SECTION 11. Tennessee Code Annotated, Section 67-4-2013, is amended by adding the following language as a new subsection (b) immediately following subsection (a) and by relettering the remaining subsections accordingly:

Notwithstanding any other law to the contrary, when a railroad, motor carrier, rail and motor carrier, pipeline, air carrier or air express carrier is included in a group of business entities required to file a consolidated excise tax return, the consolidated filing group shall use the apportionment formula that would be used on a separate entity basis by the group member that generates the highest dollar amount of gross receipts within the filing group.

SECTION 12. Tennessee Code Annotated, Section 67-4-2015, is amended by adding the following sentence immediately after the first sentence of subsection (b):

Persons required or permitted to file franchise, excise tax returns on a combined or consolidated basis shall compute their quarterly estimated franchise and excise tax payments on a combined or consolidated basis, as the case may be, the combined or consolidated group being the taxpayer.

SECTION 13. Tennessee Code Annotated, Section 67-4-2015, is amended by adding the following new subsections immediately after subsection (f) and relettering the remaining subsections accordingly:

() Notwithstanding any other law to the contrary, an affiliated group that files a consolidated franchise, excise tax return for a tax period ending on or after July 1, 2003, but before July 1, 2004, shall not be penalized if each of its quarterly estimated payments equal twenty-five percent (25%) of seventy percent (70%) of their final tax liability for the tax year.

() Notwithstanding any other law to the contrary, an affiliated group that files a consolidated franchise and excise tax return for a tax period ended on or after July 1, 2003, but before March 1, 2004, and has quarterly estimated payments due before July 1, 2003, and after having timely made such payments finds, because of changes made in the law after the payments were made, that one or more such payments may fall below twenty-five percent (25%) of seventy percent (70%) of the final franchise and excise tax liability for the tax year, may avoid being penalized if any shortage is made up by the due date of the next quarterly payment falling due after July 1, 2003.

SECTION 14. Tennessee Code Annotated, Section 67-4-2015, is amended by adding the following sentence immediately after the first sentence and immediately prior to the second sentence of subsection (g) as it existed prior to the effective date of this act:

Persons required or permitted to file franchise, excise tax returns on a combined or consolidated basis shall make their franchise, excise tax extension requests and compute the payments thereon on a combined or consolidated basis, as the case may be, the combined or consolidated group being the taxpayer. An extension request for a combined or consolidated group must show the names of each business entity that will be included in the filing group.

SECTION 15. Tennessee Code Annotated, Section 67-4-2015, is amended by adding the following language as a new subsection (k):

(k) Notwithstanding any other law to the contrary, for tax years beginning between January 1, 2003, and December 31, 2003, the commissioner of revenue is authorized to waive, in whole or in part, any statutory penalty assessed for the delinquent filing or deficient payment of any quarterly estimated franchise, excise tax declaration payment due for such tax year if, in the judgment of the commissioner or the commissioner's delegate, the taxpayer has acted reasonably and has made a good faith effort to comply with the statutory provisions of this section.

SECTION 16. Tennessee Code Annotated, Section 67-4-2103, is amended by adding the following language as new subsections (d) and (e):

(d) An affiliated group subject to the tax levied by this part shall register with the department of revenue as an affiliated group, providing such information as is reasonably required by the department. The registration information form shall be filed with the department by August 31, 2003, or within fifteen (15) days after the date the affiliated group becomes subject to the tax, whichever date occurs last. An affiliated group shall be required to so register even though some or all of the corporations included in its filing group may have registered or filed a franchise tax return under prior law. In the event that corporate members of an affiliated group cease to be a part of the filing group or in the event that new corporate members join the filing group, the affiliated

group shall so advise the department of revenue within thirty (30) days of the event by filing an amended registration form providing such information as is reasonably required by the department.

(e) The commissioner shall assess a penalty of one hundred dollars (\$100) for each failure to timely register in accordance with the provisions of this section.

SECTION 17. Tennessee Code Annotated, Section 67-4-2105(a), is amended by deleting the words and punctuation "or under the provisions of subsection (b)" immediately after the symbol, numbers and punctuation "§ 67-4-2008".

SECTION 18. Tennessee Code Annotated, Section 67-4-2106, is amended by adding the following sentence at the end of subsection (b):

For persons required to file franchise tax returns on a consolidated basis, net worth is defined as the difference between the total assets less total liabilities of the entire filing group as shown on the books and records of the group kept in accordance with generally accepted accounting principles.

SECTION 19. Tennessee Code Annotated, Section 67-4-2106, is amended by deleting the last sentence of subsection (c) in its entirety and substituting instead the following new language:

Except for taxpayers required or permitted to file franchise tax returns on a combined or consolidated basis, each taxpayer is considered a separate and single business entity for Tennessee franchise tax purposes and shall file its franchise tax return on a separate entity basis reflecting only its own business activities.

SECTION 20. Tennessee Code Annotated, Section 67-4-2107, is amended by deleting subsection (b) in its entirety and relettering the remaining subsection accordingly.

SECTION 21. Tennessee Code Annotated, Section 67-4-2108(a), is amended by adding the following immediately after the first sentence of subdivision (3):

For persons required to file franchise tax returns on a consolidated basis, "property" for purposes of this section shall be the property owned or used by the entire filing group valued at cost less accumulated depreciation computed in accordance with generally accepted accounting principles.

SECTION 22. Tennessee Code Annotated, Section 67-4-2109(e), is amended by deleting the first sentence of subdivision (1) in its entirety and substituting instead the following:

Except for unitary groups of financial institutions and business entities required to file franchise tax returns on a combined or consolidated basis, each taxpayer is considered a separate entity; therefore, in the case of mergers, consolidations, and like transactions, no tax credit incurred by the predecessor taxpayer shall be allowed as a credit on the tax return filed by the successor taxpayer. Except as otherwise provided in Section 67-4-2118, in no case shall any taxpayer, whether filing its franchise tax return on a combined, consolidated, or single entity basis, be permitted to take a credit carryover that it, or a business entity included in its filing group, generated during a tax year in which such entity was not subject to Tennessee franchise, excise taxes and did not file a franchise, excise tax return.

SECTION 23. Tennessee Code Annotated, Section 67-4-2109(e), is amended by deleting the language in subdivision (3) in its entirety and substituting instead the following language:

Taxpayers required to file franchise tax returns on a combined or consolidated basis may take any qualified credit that was generated by any group member that is in existence as a member of the group at the end of the group's tax year; provided that such credit has not previously been taken by the member itself before it joined the group or by another group at the time the group member generating the credit was a member of that group; and provided, that the credit carryover shall be subject to the limitations set forth in this subsection. Except as otherwise provided in Section 67-4-2118, in no

case shall any taxpayer filing its franchise tax return on a combined or consolidated basis, be permitted to take a credit carryover that a business entity included in its filing group generated during a tax year in which such entity was not subject to Tennessee franchise, excise taxes and did not file a franchise, excise tax return.

SECTION 24. Tennessee Code Annotated, Section 67-4-2111, is amended by adding the following sentence at the end of subsection (a):

Persons required to file franchise tax returns on a consolidated basis shall compute their franchise tax apportionment formula on a consolidated basis.

SECTION 25. Tennessee Code Annotated, Section 67-4-2108(a)(6), is amended by adding the following language at the end of subdivision (B) after the words and punctuation “tax base;”:

provided however, in the case of an affiliated group “exempt inventory” means that portion of the taxpayer’s finished goods inventory in excess of fifty million dollars (\$50,000,000);

SECTION 26. Tennessee Code Annotated, Section 67-4-2113, is amended by designating the existing language as subsection (a) and by adding the following language as a new subsection (b):

(b) Notwithstanding any other law to the contrary, when a railroad, motor carrier, rail and motor carrier, pipeline, air carrier or air express carrier is included in a group of business entities required to file a consolidated franchise tax return, the consolidated filing group shall use the apportionment formula that would be used on a separate entity basis by the group member that generates the highest dollar amount of gross receipts within the filing group.

SECTION 27. This act shall take effect upon becoming law and shall apply to tax years ending on or after July 1, 2003, the public welfare requiring it.